



# Finance Act 2005

## 2005 CHAPTER 7

### PART 2

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER 6

#### FILM RELIEF

##### *Companies benefited by film relief: exit charges*

#### **66 When a chargeable event occurs**

- (1) A chargeable event occurs in relation to a company (“C”) where an exit event occurs in relation to C and the following conditions are satisfied—
- (a) C was a film rights company immediately before the time of the exit event, and
  - (b) C or another company—
    - (i) had made a relevant claim for a deduction under section 42 of F(No 2)A 1992 (relief for production or acquisition expenditure on a film) before that time, or
    - (ii) first makes such a claim at or after that time.
- (2) C is a “film rights company” at a particular time if, at that time, it—
- (a) is party to an agreement which guarantees it an amount of income arising from the exploitation of a film (“the film”),
  - (b) carries on a trade or business which consists of or includes the exploitation of films or the receipt of income derived from films (“the relevant trade”), and
  - (c) is a 75% subsidiary of the principal company of a group of companies (“the principal company”).

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- (3) An agreement “guarantees” C an amount of income if the agreement, or any part of it, is designed to secure the receipt by C of that amount (or at least that amount) of income.
- (4) An “exit event” occurs in relation to C on each occasion, on or after 2nd December 2004, when one of the following happens—
- (a) C ceases to be a 75% subsidiary of the principal company (“exit event X”);
  - (b) C ceases to be within the charge to corporation tax (“exit event Y”);
  - (c) there is a relevant disposal by C at an undervalue within the meaning given by section 68 (“exit event Z”).
- (5) A “relevant claim” means a claim in respect of expenditure relating to the film and, for the purposes of subsection (1)(b)(i), it does not matter whether the claim was made before, or on or after, 2nd December 2004.
- (6) For the purposes of sections 67 to 71—
- “the guaranteed income agreement” means the agreement mentioned in subsection (2)(a),
- “the guaranteed income” means the income arising from the exploitation of the film—
- (a) whose receipt by C that agreement, or any part of it, is designed to secure, and
  - (b) which would, if it were received by C at a time when it is carrying on the relevant trade, be income from that trade,
- and references to expressions which are defined in this section are to be construed in accordance with this section.
- (7) For the purposes of this section—
- “agreement” means an agreement or series of agreements; and
- “film” is to be construed in accordance with paragraph 1 of Schedule 1 to the Films Act 1985 (c. 21),
- and an agreement, or part of an agreement, is to be regarded as designed to secure the receipt by C of an amount (or at least an amount) if it was designed to secure the receipt of that amount (or at least that amount) by another person and C is that person’s successor under the agreement.
- (8) This section is deemed to have come into force on 2nd December 2004.

## **67 Consequences of a chargeable event: exit event X or Y**

- (1) This section applies where a chargeable event occurs in relation to C by virtue of section 66 and the exit event in question is exit event X or Y.
- (2) C is to be treated for corporation tax purposes as receiving, immediately before the exit event, an amount of income from the relevant trade equal to the chargeable amount.
- (3) Where the exit event is exit event X, an amount equal to the chargeable amount is to be treated for corporation tax purposes as a loss of the relevant trade brought forward under section 393 of ICTA (relief of trading losses against future trading profits) to the exit accounting period.
- (4) But that loss may only be set off against income which—

- (a) derives directly from the rights to guaranteed income under the guaranteed income agreement, and
  - (b) is brought into account by C for the relevant trade after the exit event, and, in particular, may not be set off against the income which C is treated as receiving under subsection (2) by virtue of the exit event.
- (5) The “chargeable amount” is the value immediately before the exit event of the rights to guaranteed income under the guaranteed income agreement calculated in accordance with section 70.
- (6) Any income received in, or losses brought forward to, an accounting period by virtue of this section are in addition to any other income received in, or losses brought forward to, that period.
- (7) In this section “exit accounting period” means the accounting period of C in which the exit event occurs.
- (8) This section is deemed to have come into force on 2nd December 2004.

## **68 Exit event Z: a relevant disposal at an undervalue**

- (1) This section applies for the purposes of—  
section 66(4)(c) (definition of exit event Z),  
section 69 (consequences of a chargeable event: exit event Z), and  
section 70 (valuation of the “disposed rights”).
- (2) A “relevant disposal” means a disposal by C directly or indirectly to a third party (“TP>”) of rights to guaranteed income under the guaranteed income agreement.
- (3) The “disposed rights” are the rights to guaranteed income under the guaranteed income agreement which are the object of the relevant disposal.
- (4) A relevant disposal is at an undervalue where the amount of the disposal consideration (“V1”) is less than the value of the disposed rights immediately before the disposal calculated in accordance with section 70 (“V2”).
- (5) It does not matter whether the disposed rights are disposed of alone or as part of a larger disposal.
- (6) Where the disposed rights are disposed of as part of a larger disposal, the amount of the disposal consideration for the larger disposal which is attributable to the relevant disposal is to be determined on such basis as is just and reasonable.
- (7) In this section—  
“disposal” means any surrender, giving up, assignment or other disposal;  
“disposal consideration”, in relation to a disposal, means the amount of the consideration for the disposal brought into account as income of the relevant trade by C at the date of that disposal;  
“third party” means a person who is not the principal company or a 75% subsidiary of the principal company.
- (8) This section is deemed to have come into force on 2nd December 2004.

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## 69 Consequences of a chargeable event: exit event Z

- (1) This section applies where a chargeable event occurs in relation to C by virtue of section 66 and the exit event in question is exit event Z.
- (2) C is to be treated for corporation tax purposes as receiving, immediately before the exit event, an amount of income from the relevant trade equal to the chargeable amount.
- (3) Where TP is within the charge to corporation tax, an amount equal to the chargeable amount is to be treated for corporation tax purposes as a loss of TP's trade brought forward under section 393 of ICTA (relief of trading losses against future trading profits) to the accounting period in which TP acquires the disposed rights.
- (4) Where TP is within the charge to income tax, an amount equal to the chargeable amount is to be treated for income tax purposes as a loss of TP's trade brought forward under section 385 of ICTA (carry-forward against subsequent profits) to the year of assessment in which TP acquires the disposed rights.
- (5) But a loss brought forward under subsection (3) or (4) may only be set off against income which derives directly from the disposed rights.
- (6) The "chargeable amount" is the difference between V1 and V2.
- (7) Any income received in, or losses brought forward to, an accounting period by virtue of this section are in addition to any other income received in, or losses brought forward to, that period.
- (8) This section is deemed to have come into force on 2nd December 2004.

## 70 Valuation of the "rights to guaranteed income" and "disposed rights"

- (1) For the purposes of section 67, the value immediately before the exit event of the rights to guaranteed income under the guaranteed income agreement is calculated as follows—

### *Step 1*

Find the amount of each payment of income which at that time the guaranteed income agreement is designed to secure is received by C but which at that time has not been brought into account for the relevant trade by C ("RI").

### *Step 2*

For each payment find the day for payment which the agreement is designed to secure ("the payment day").

### *Step 3*

For each payment find the number of days in the period ("P") which—

- (a) begins with the day on which the exit event occurs, and
- (b) ends with the payment day.

### *Step 4*

Calculate the net present value of each payment ("NPVRI") by applying the following formula—

$$\frac{RI}{(1 + T)^P}$$

where—

T is the temporal discount rate, and

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$i$  is the number of days in  $P$  divided by 365.

*Step 5*

Add together each amount of NPVRI determined under step 4.

- (2) For the purposes of section 68, in relation to a relevant disposal, the value of the disposed rights immediately before the disposal is calculated as follows—

*Step 1*

Find the amount of each payment of income which at that time the guaranteed income agreement is designed to secure is received by  $C$  by virtue of the disposed rights but which at that time has not been brought into account for the relevant trade by  $C$  (“ $DI$ ”).

*Step 2*

For each payment find the day for payment which the agreement is designed to secure (“the payment day”).

*Step 3*

For each payment find the number of days in the period (“ $P$ ”) which—

- (a) begins with the day on which the relevant disposal occurs, and
- (b) ends with the payment day.

*Step 4*

Calculate the net present value of each payment (“NPVDI”) by applying the following formula—

$$\frac{DI}{(1 + T)^i}$$

where—

$T$  is the temporal discount rate, and

$i$  is the number of days in  $P$  divided by 365.

*Step 5*

Add together each amount of NPVDI determined under step 4.

- (3) For the purposes of this section the “temporal discount rate” is 3.5% or such other rate as may be specified by regulations made by the Treasury.
- (4) Regulations under subsection (3) may make such provision as is mentioned in subsection (3)(b) to (f) of section 178 of FA 1989 (power of Treasury to set rates of interest).
- (5) Subsection (5) of that section (power of Inland Revenue to specify rate by order in certain circumstances) applies in relation to regulations under subsection (3) as it applies in relation to regulations under that section.
- (6) This section is deemed to have come into force on 2nd December 2004.

## 71 Meaning of “company” and related terms

- (1) For the purposes of sections 66 to 70, two companies are deemed to be members of a group of companies if—
- (a) one is the 75% subsidiary of the other, or
  - (b) both are 75% subsidiaries of a third company.

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- (2) For those purposes, the “principal company” of a group of companies means a company—
- (a) which is not a 75% subsidiary of another company to whom group relief would be available under section 402 of ICTA if it were to make a group claim under that section in respect of any trading losses surrendered by C, and
  - (b) to whom group relief would be available under section 402 of ICTA if it were to make a group claim under that section in respect of any trading losses surrendered by C.
- (3) For the purposes of sections 66 to 70 and this section—
- (a) a company is to be treated as a 75% subsidiary of another company if it would be such a subsidiary of that company for the purposes of section 402 of ICTA (surrender of relief between members of group), and
  - (b) “company” has the same meaning as it has for the purposes of that section.
- (4) This section is deemed to have come into force on 2nd December 2004.